IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs January 13, 2009

EARL D. KING V. STATE OF TENNESSEE

Appeal from the Circuit Court for Marshall County
No. 2008-CR-85 Robert Crigler, Judge

No. M2008-01766-CCA-R3-PC - Filed February 19, 2009

The pro se Petitioner, Earl D. King, appeals from the Marshall County Circuit Court's summary dismissal of his petition for post-conviction relief. The Petitioner seeks relief from his eighteen-year sentence resulting from his guilty pleas to two counts of burglary and one count of vandalism. The Petitioner alleges that he was sentenced in violation of Blakely v. Washington, 542 U.S. 296 (2004), because the trial court applied enhancement factors not found by the jury in establishing his range and in increasing his sentence above the minimum. The post-conviction court summarily dismissed the petition for failing to state a colorable claim. Following our review, we affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Earl D. King, Pro Se, Tiptonville, Tennessee.

Robert E. Cooper, Jr., Attorney General and Reporter; Frank Borger-Gilligan, Assistant Attorney General; and Weakley Barnard, District Attorney General, for the appellee, State of Tennessee.

OPINION

The record on appeal is sparse. On June 30, 2008, the Petitioner filed his pro se petition for post-conviction relief in the Marshall County Circuit Court. In his petition, the Petitioner alleges that he pleaded guilty to two counts of burglary and one count of vandalism on March 5, 2008, and that sentence was imposed on this same date.[1] He states that he "enter[ed] his plea of guilty to the pronounced sentence," an effective eighteen-year sentence—twelve years as a career offender for

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[1] Judgment forms are not included in the record on appeal.

each count of burglary and six years for vandalism as a persistent offender; the burglary counts were to be served concurrently with one another and consecutively to the sentence for vandalism.[2] The Petitioner contended that the sentence as imposed by the trial court violated the dictates of Blakely v. Washington, 542 U.S. 296, 124 (2004), in that the trial court applied enhancement factors not found by a jury in determining his sentencing range and in imposing the maximum sentence within the range.

The post-conviction court held a brief hearing and found that the Petitioner's guilty plea and sentence resulted from a negotiated plea agreement and did not violate the dictates of Blakely. On July 11, 2008, the post-conviction court entered an order summarily dismissing the petition for post-conviction relief, reasoning that the petition failed to state a colorable claim. This appeal followed.

As determined by the post-conviction court, the petition indicates that the Petitioner's sentence was the result of a guilty plea agreement, nullifying any potential Blakely error.[3] See Keith T. Perry v. Glen Turner, Warden, No. W2007-01176-CCA-R3-HC, 2008 WL 185810, at *2 (Tenn. Crim. App., Jackson, Jan. 22, 2008), perm. to appeal denied, (Tenn. July 7, 2008).

The Petitioner has raised Blakely's application to consecutive sentencing for the first time on appeal; therefore, the issue is waived. However, we also note that this Court has consistently held Blakely inapplicable to the consecutive sentencing determination. See State v. John Britt, W2006-01210-CCA-R3-CD, 2007 WL 4355480 (Tenn. Crim. App., Jackson, Dec.12, 2007), perm. to appeal denied, (Tenn. Apr. 28, 2008).

For these reasons, we conclude that the summary dismissal was appropriate. The judgment of the post-conviction court is affirmed.

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DAVID H. WELLES, JUDGE

[2] It does not appear that the Petitioner directly appealed this sentence.

[3] We also note that the docketing statement provided by the Petitioner to this Court reflects an offense date of December 18, 2007. His brief states that he was arrested on this same date. In response to Blakely, our legislature amended several provisions of the Criminal Sentencing Reform Act of 1989, said changes became effective June 7, 2005. See 2005 Tenn. Pub. Acts ch. 353. Thus, our legislature's recent amendments are applicable to this case. This new act as amended by the legislature has been cited with approval by the United States Supreme Court. See Cunningham v. California, 549 U.S. 270, 294 n.18 (2007).